

**Baker & Hostetler LLP**

45 Rockefeller Plaza  
New York, NY 10111  
Telephone: (212) 589-4200  
Facsimile: (212) 589-4201  
David J. Sheehan  
Nicholas J. Cremona  
Michael R. Matthias

*Attorneys for Irving H. Picard, Trustee for the  
Substantively Consolidated SIPA Liquidation of  
Bernard L. Madoff Investment Securities LLC  
and the Estate of Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation of  
Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

JAMES P. MARDEN, IRIS ZURAWIN MARDEN,  
and PATRICE M. AULD,

Defendants.

Adv. Pro. No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

Adv. Pro. No. 10-04341 (SMB)

**STIPULATION AND ORDER DISMISSING CERTAIN COUNTS AND  
ALLEGATIONS CONTAINED IN THE TRUSTEE'S AMENDED COMPLAINT,  
AND PERMITTING THE TRUSTEE TO FILE A SECOND AMENDED COMPLAINT**

Irving H. Picard (the "Trustee"), as trustee for the liquidation of the business of Bernard  
L. Madoff Investment Securities LLC ("BLMIS") under the Securities Investor Protection Act,

15 U.S.C. §§ 78aaa, *et seq.*, and the substantively consolidated estate of Bernard L. Madoff individually, by and through his counsel, Baker & Hostetler LLP, on the one hand, and the above-named defendants (“Defendants”), by and through their counsel, Pryor Cashman LLP, on the other (collectively, the “Parties”), hereby stipulate and agree to the following:

**WHEREAS:**

A. On November 30, 2010, the Trustee filed his original Complaint against Defendants in this Court. While the reference of this adversary proceeding was withdrawn to the U.S. District Court, the Trustee filed an Amended Complaint on January 25, 2012 (the “Amended Complaint”). After the referral of this adversary proceeding back to this Court, Defendants filed an Answer to the Amended Complaint on April 17, 2014.

B. In Counts One through Six of the Amended Complaint, the Trustee asserted claims to avoid and recover from Defendants the alleged Initial Transfers<sup>1</sup> made by BLMIS, or their value, as fraudulent transfers, and to avoid Obligations (as defined and alleged in Paragraphs 38-40 of the Amended Complaint) incurred by BLMIS, under the various statutes referenced in the Amended Complaint. In Count Seven of the Amended Complaint, the Trustee asserted a claim to recover alleged Subsequent Transfers or their value from Defendants.

C. The Trustee now wishes to file a Second Amended Complaint.

**IT IS HEREBY STIPULATED BY THE UNDERSIGNED COUNSEL:**

1. Pursuant to an Order Granting in Part and Denying in Part Defendants’ Motions to Dismiss filed in this adversary proceeding on July 16, 2016 (Dkt. No. 56): (a) the Trustee’s claims in Counts Two through Six of the Amended Complaint were dismissed with prejudice; (b) Count Seven of the Amended Complaint was dismissed without prejudice; and (c) the portions of Counts One through Six of the Amended Complaint that sought to avoid the Obligations were dismissed with prejudice.

---

<sup>1</sup> Capitalized terms, unless otherwise defined, have the meanings given in the Amended Complaint.

2. Pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure, as incorporated by Rule 7041 of the Federal Rules of Bankruptcy Procedure, the Trustee's allegations in or incorporated in Count One of the Amended Complaint that characterize any transfers to any of the Defendants as having been made by or from BLMIS "for the benefit of" (as the phrase appears in 11 U.S.C. 550(a)(1)) such Defendants are dismissed without prejudice.

3. Pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure, as incorporated by Rule 7015 of the Federal Rules of Bankruptcy Procedure, the Trustee may file a Second Amended Complaint, a true and correct copy of which is attached as Exhibit "1."

4. Following entry of an Order approving this Stipulation, the Trustee may file the Second Amended Complaint. Except as otherwise stipulated here, upon its filing pursuant to this paragraph, the Second Amended Complaint shall supersede the original Complaint and the Amended Complaint in their entirety.

5. Defendants shall have thirty (30) days from the date of the filing of the Second Amended Complaint pursuant to Paragraph 4 above to respond to the Second Amended Complaint.

6. Defendants: (a) waive their right to formal service of process associated with the Second Amended Complaint, (b) acknowledge that the Second Amended Complaint shall be deemed to have been served upon Defendants on the date on which it is filed pursuant to Paragraph 4 above, and (c) waive their defenses of insufficiency of process or insufficiency of service of process with respect to the Second Amended Complaint.

7. Except as expressly set forth herein, the Parties reserve all rights and defenses they may have. The provisions of this Stipulation shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

8. The Parties shall meet and confer to select dates extending the deadlines set forth in the Case Management Notice filed on November 11, 2015.

9. This Stipulation may be signed by the Parties in any number of counterparts, each of which when so signed shall be an original, and all of which together shall constitute one and the same instrument. A signed facsimile, photostatic, or electronic copy of the Stipulation shall be deemed an original.

Dated: May 19, 2017

Of Counsel:

**BAKER & HOSTLER LLP**

11601 Wilshire Boulevard, Suite 1400  
Los Angeles, California 90025-0509  
Telephone: 310.820.8800  
Facsimile: 310.820.8859  
Michael R. Matthias  
Email: mmatthias@bakerlaw.com

**BAKER & HOSTETLER LLP**

By: s/ Nicholas J. Cremona

45 Rockefeller Plaza  
New York, New York 10111  
Telephone: 212.589.4200  
Facsimile: 212.589.4201  
David J. Sheehan  
Email: dsheehan@bakerlaw.com  
Nicholas J. Cremona  
Email: ncremona@bakerlaw.com

*Attorneys for Irving H. Picard, Trustee for the  
Substantively Consolidated SIPA Liquidation of  
Bernard L. Madoff Investment Securities LLC  
and for the Estate of Bernard L. Madoff*

**PRYOR CASHMAN LLP**

By: s/ Richard Levy, Jr.

7 Times Square  
New York, New York 10036-6569  
Telephone: 212-421-4100  
Facsimile: 212-326-0806  
Richard Levy, Jr.

Email: rlevy@pryorcashman.com  
David C. Rose  
drose@pryorcashman.com  
Eric Dowell  
edowell@pryorcashman.com

*Attorneys for Defendants*

**SO ORDERED:**

/s/ STUART M. BERNSTEIN  
HONORABLE STUART M. BERNSTEIN  
UNITED STATES BANKRUPTCY JUDGE

Dated: May 23<sup>rd</sup>, 2017  
New York, New York